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801 CALIFORNIA ST.
MOUNTAIN VIEW, CA 94041

EXAMINER
DAO, THUY CHAN

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _03_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _04 February 2008_.

2a) ☒ This action is FINAL.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-4 and 6-29_ is/are pending in the application.

    4a) Of the above claim(s) _5_ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-4 and 6-29_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _31 December 2003_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the amendment filed on February 4, 2008.

2. Claims 1-4 and 6-29 have been examined.

Response to Amendments

3. Per Applicants' request, claims 1-4 and 6-18 have been amended; claim 5 has been canceled; and claims 19-29 have been added.

4. The objection to the specification is withdrawn in view of Applicants' amendments.

5. The 35 USC §101 rejection over claims 11-18 is withdrawn in view of Applicants' amendments.

Response to Arguments

6. Applicants' arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections – 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4 and 6-29 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Publication No. 2004/0098361 to Peng (art made of record, hereinafter "Peng").

Claim 1:

Peng discloses *a method for installing a software component on a computing device without adversely impacting other software applications on the computing device, the method comprising:*

> *monitoring resource usage by software applications running on the computing device* (e.g., [0015], [0043], [0049]);

> *determining a need of the computing device for a software component* (e.g., [0035]-[0036], [0015]); and

> *initiating an installation of the software component on the computing device during a time period selected based on the determined need* (e.g., [0027], [0034]-[0035], [0047]) *and*

> *the monitored resource usage that does not adversely impact the software applications* (e.g., [0017], [0043], [0049]).

Claim 2:

The rejection of claim 1 is incorporated. Peng discloses *monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a processor* (e.g., [0016]-[0017])

Claim 3:

The rejection of claim 1 is incorporated. Peng discloses:

> *monitoring the resource usage by the software applications running on the computing device comprises monitoring usage oft a processor by the software applications* (e.g., [0018]-[0020]), *and*

> *initiating the installation of the software component during a time period when sufficient processor resources are available to not adversely impact usage of the processor by the software applications* (e.g., [0026]-[0028]).

Claim 4:

The rejection of claim 1 is incorporated. Peng discloses:

the computing device is a recipient computing device on a network connected to a donor computing device comprising the software component, and the method further comprises: monitoring usage of the network by the software applications (e.g., [0041]-[0044]); and

initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications (e.g., [0047]-[0049]).

Claim 6:

The rejection of claim 4 is incorporated. Peng discloses monitoring the transfer of the software component; and reducing a transfer rate for the transfer of the software component based on an increase in the usage of the network by the software applications (e.g., [0031]-[0034]).

Claim 7:

The rejection of claim 6 is incorporated. Peng discloses:

reducing the transfer rate for the transfer of the software component comprises halting the transfer (e.g., [0015]), and wherein the method further comprises:

resuming the transfer based on a decrease in the usage of the network by the software applications (e.g., [0035]-[0036]); and

continuing the transfer until the software component has been transferred to the recipient computing device (e.g., [0043]).

Claim 8:

The rejection of claim 1 is incorporated. Peng discloses determining the need of the computing device for the software component comprises monitoring a usage pattern of a user of the computing device (e.g., [0049]).

Claim 9:

The rejection of claim 1 is incorporated. Peng discloses *initiating the installation of the software component on the computing device comprises initiating the installation of the software component on the computing device when sufficient processor resources are available* (e.g., [0027]).

Claim 10:

The rejection of claim 6 is incorporated. Peng discloses *reducing the transfer rate for the transfer of the software component comprises adjusting the transfer rate for the transfer of the software component based on a change to a network connection of the recipient computing device* (e.g., [0034]-[0035]).

Claim 11:

Peng discloses *a computer-readable storage medium on which is encoded executable program code for performing a method comprising:*

monitoring resource usage by software applications running on the computing device (e.g., [0015], [0043], [0049]);

determining a need of the computing device for a software component (e.g., [0035]-[0036], [0015]); and

initiating an installation of the software component on the computing device during a time period selected based on the determined need (e.g., [0027], [0034]-[0035], [0047]) and

the monitored resource usage that does not adversely impact the software applications (e.g., [0017], [0043], [0049]).

Claim 12:

The rejection of claim 11 is incorporated. Peng discloses *the monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a processor* (e.g., [0018]-[0020]).

Claim 13:

The rejection of claim 11 is incorporated. Peng discloses:

monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a processor by the software applications (e.g., [0017]), *and*

initiating the installation of the software component during a time period when sufficient processor resources are available to not adversely impact usage of the processor by the software applications (e.g., [0018]-[0020]).

Claim 14:

The rejection of claim 11 is incorporated. Peng discloses:

computing device is a recipient computing device on a network connected to a donor computing device comprising the software component, and the method further comprises: monitoring usage of the network by the software applications (e.g., [0034]-[0035])*; and*

initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications (e.g., [0029]-[0032]).

Claim 15:

The rejection of claim 14 is incorporated. Peng discloses *the method further comprises: monitoring the transfer of the software component; and reducing a transfer rate for the transfer of the software component based on an increase in the usage of the network by the software applications* (e.g., [0041]-[0049]).

Claim 16:

The rejection of claim 15 is incorporated. Peng discloses:

reducing the transfer rate for the transfer of the software component comprises halting the transfer (e.g., [0015])*, and wherein the method further comprises:*

   *resuming the transfer based on a decrease in the usage of the network by
the software applications* (e.g., [0017])*; and*

   *continuing the transfer until the software component has been transferred
to the recipient computing device* (e.g., [0016]-[0018]).

Claim 17:

   The rejection of claim 11 is incorporated. Peng discloses *the determining the
need of the computing device for the software component comprises monitoring a
usage pattern of a user of the computing device* (e.g., [0031]-[0034]).

Claim 18:

   The rejection of claim 11 is incorporated. Peng discloses *initiating the installation
of the software component on the computing device comprises initiating the installation
of the software component on the computing device when sufficient processor
resources are available* (e.g., [0027], [0043]).

Claim 19 (new):

   The rejection of claim 15 is incorporated. Peng discloses *the reducing the
transfer rate for the transfer of the software component comprises adjusting the transfer
rate for the transfer of the software component based on a change to a network
connection of the recipient computing device* (e.g., [0026]-[0028]).

Claim 20 (new):

   Peng discloses *a computing device, comprising:*

   *a computer processor; software applications running on the computer
processor* (e.g., FIG. 1, [0015]-[0020]; [0026]-[0028])*;*

   *a capture processor running on the computer processor and configured to
monitor resource usage by the software applications and further configured to
determine a need of the computing device for a software component* (e.g., [0043],
[0035]-[0036]; [0049])*; and*

an install processor running on the computer processor and configured to initiate an installation of the software component on the computing device at a time selected based on the determined need and the monitored resource usage that does not adversely impact the resource usage by the software applications (e.g., [0027], [0034]-[0035], [0043], [0049]).

Claim 21 (new):

The rejection of claim 20 is incorporated. Peng discloses *the resource usage monitored by the capture processor comprises usage of the computer processor and usage of a storage medium* (e.g., [0017], [0047]).

Claim 22 (new):

The rejection of claim 20 is incorporated. Peng discloses:

the capture processor is further configured to monitor usage of the computer processor by the software applications (e.g., [0031]-[0034]), *and*

initiate the installation of the software component at a time when sufficient computer processor resources are available to not adversely impact usage of the computer processor by the software applications (e.g., [0039]-[0042]).

Claim 23 (new):

The rejection of claim 21 is incorporated. Peng discloses:

the computing device is a recipient computing device on a network connected to a donor computing device comprising the software component, wherein the capture processor is further configured to monitor usage of the network by the software applications (e.g., [0016]-[0018]), *and*

wherein the installation processor is further configured to initiate a transfer of the software component from the donor computing device to the recipient computing device via the network at a time when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications (e.g., [0024-0028]).

Claim 24 (new):

The rejection of claim 1 is incorporated. Peng discloses *monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a storage medium* (e.g., [0026]-[0030]).

Claim 25 (new):

The rejection of claim 1 is incorporated. Peng discloses *determining the need of the computing device for the software component comprises surveying files on the computing device* (e.g., FIG. 2, [0024]-[0027]).

Claim 26 (new):

The rejection of claim 1 is incorporated. Peng discloses *the initiating the installation of the software component on the computing device comprises initiating the installation of the software component on the computing device when sufficient space on the storage medium is available* (e.g., [0034]-[0036]).

Claim 27 (new):

The rejection of claim 6 is incorporated. Peng discloses *reducing the transfer rate for the transfer of the software component comprises setting a maximum transfer rate for the transfer of the software component to a value that is less than a current rate* (e.g., [0043]-[0049]).

Claim 28 (new):

The rejection of claim 11 is incorporated. Peng discloses *the determining the need of the computing device for the software component comprises surveying files on the computing device* (e.g., [0017], [0035]-[0036], [0043]).

Claim 29 (new):

The rejection of claim 15 is incorporated. Peng discloses *the reducing the transfer rate for the transfer of the software component comprises setting a maximum*

transfer rate for the transfer of the software component to a value that is less than a
current rate (e.g., [0027], [0034]-[0035], [0047], [0049]).

Conclusion

9. Applicants' amendment necessitated the new ground(s) of rejection presented in this
Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).
Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within
TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication should be directed to examiner Thuy
Dao (Twee), whose telephone/fax numbers are (571) 272 8570 and (571) 273 8570,
respectively. The examiner can normally be reached on every Tuesday, Thursday, and
Friday from 6:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the
examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or
proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or
proceeding should be directed to the TC 2100 Group receptionist whose telephone
number is (571) 272 2100.

Information regarding the status of an application may be obtained from the
Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T Dao/

/Tuan Q. Dam/
Supervisory Patent Examiner, Art Unit 2192